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PLR-137999-08

Date:

June 26, 2009

Legend:

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

Fund 9 =

Fund 10 =

Fund 11 =

Fund 12 =

Fund 13 =

Fund 14 =

Fund 15 =

Fund 16 =

Fund 17 =

Fund 18 =

Fund 19 =

Fund 20 =

Fund 21 =

Fund 22 =

Fund 23 =

Fund 24 =

Fund 25 =

Fund 26 =

Fund 27 =

Fund 28 =

Fund 29 =

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Fund 30 =

Fund 31 =

Fund 32 =

Fund 33 =

Upper Tier Funds =

Trust A =

Trust B =

Trust C	=
Trust D	=
Trust E	=
Trust F	=
Trust G	=
Trust H	=
Trust I	=
Trust J	=
Trust K	=
Trust L	=
Trust M	=
Trust N	=
Holding Company	=
State A	=
State B	=
State C	=

Dear :

This responds to your request for a ruling dated August 4, 2008, and subsequent correspondence dated April 27, 2009, filed by your authorized representative on behalf of Funds 1 through 33 (each a “Fund” and, collectively, “Funds”). The requested ruling is as follows: certain payments made by the Funds of a portion of Upper Tier Funds’ operating expenses pursuant to special servicing agreements will not be considered preferential dividends of the Funds under section 562(c) of the Internal Revenue Code of 1986 (the Code).

Facts:

Upper Tier Funds are series of Trust A, a State A statutory trust. Funds 1 and 2 are State A statutory trusts. Funds 3, 4, and 5 are series of Trust B, a State A statutory trust. Funds 6 and 7 are series of Trust C, a State B business trust. Funds 8, 9, 10, and 11 are series of Trust D, a State A statutory trust. Funds 12 and 13 are State A statutory trusts. Fund 14 is a series of Trust E, a State A statutory trust. Funds 15 and 16 are series of Trust F, a State A statutory trust. Fund 17 is a State A statutory trust. Fund 18 is a series of Trust G, a State A statutory trust. Funds 19, 20, and 21 are series of Trust H, a State A statutory trust. Fund 22 is a series of Trust I, a State A statutory trust. Funds 23, 24, 25, 26, and 27 are series of Trust J, a State A statutory trust. Fund 28 is a State A statutory trust. Fund 29 is a series of Trust K, a State A statutory trust. Fund 30 is a series of Trust L, a State A statutory trust. Fund 31 is a series of Trust M, a State A statutory trust. Fund 32 is a State C corporation. Fund 33 is a series of Trust N, a State A statutory trust.

Each Fund and each Upper Tier Fund is managed by a subsidiary of Holding Company. The Funds and Upper Tier Funds all qualify as regulated investment companies (RICs) under section 851 of the Code and are fiscal year, accrual method taxpayers. The Funds and the Upper Tier Funds are registered as series of open-end management investment companies under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (1940 Act).

The Funds will operate as underlying, or lower-tier, funds in a fund-of-funds structure. The Upper Tier Funds have similar investment objectives to those of the Funds. Upper Tier Funds are designed to provide investors with a simple and cost-effective means of investing in a diversified group of RICs; therefore, they may invest substantially all of their assets in Funds, other RICs, and other securities in order to provide shareholders with access to diversified portfolios. No Upper Tier Fund invests in another Upper Tier Fund, and no Upper Tier Fund is also a lower-tier fund.

Certain Funds and Upper Tier Funds currently offer multiple classes of shares in accordance with plans duly adopted under Rule 18f-3 of the 1940 Act. The management fee and all other fund-level expenses of each Fund, and each Upper Tier Fund, are borne *pro rata* by the Fund's shareholders in accordance with the number of shares owned. Certain other expenses are allocated specifically to individual classes of shares, such as Rule 12b-1 distribution fees. Additionally, transfer agency fees are allocated on a fixed-fee per account basis.

The Funds and the Upper Tier Funds have proposed special servicing agreements wherein they may adopt expense sharing arrangements that seek to balance any savings to the Funds caused by a reduction in operational expenses and fees between the Upper Tier Funds and the Funds (Servicing Agreements). Without such an arrangement, the Upper Tier Funds' shareholders will indirectly pay their

proportionate share of any Fund fee or expense. The terms and conditions of the Servicing Agreements include:

- (1) The Funds will bear the operating expenses (other than any management fees, Rule 12b-1 fees or class-specific administrative service fees) of an Upper Tier Fund in proportion to the average daily value of shares of such Fund owned by the Upper Tier Funds.
- (2) No Fund may reimburse transfer agent expenses of an Upper Tier Fund, including sub-accounting expenses and other out-of-pocket expenses, at a rate in excess of the average per account transfer agent expenses of the Fund, including sub-accounting expenses and other out-of-pocket expenses, expressed as a basis point charge.
- (3) The total amount of operating expenses of an Upper Tier Fund that may be paid by a Fund cannot exceed the estimated benefits to that Fund arising from the purchase of its shares by the Upper Tier Fund.
- (4) The total amount of operating expenses of an Upper Tier Fund that may be paid by a Fund cannot exceed the amount of actual operating expenses incurred by the Upper Tier Fund.
- (5) No affiliated person of an Upper Tier Fund, or affiliated person of such affiliated person, will receive, directly or indirectly, any portion of the Fund payments, except for bona fide transfer agent services approved by the board of directors or trustees of the Fund, including a majority of directors or trustees who are not "interested persons" under the 1940 Act

The Servicing Agreements will make the Upper Tier Funds more attractive to investors by improving shareholders' returns on their investments through a reduction in the annual operating expenses incurred by the Upper Tier Funds. The Servicing Agreements are intended to capture, in part, the benefits realized by the Funds, including savings resulting from having one large shareholder account instead of many smaller shareholder accounts. Additionally, the Servicing Agreements are intended to generate benefits for the Funds as a result of the increase in their assets affected by a similar increase in the assets of the Upper Tier Funds.

The amount of expenses for services that may be paid by a Fund to an Upper Tier Fund (Fund Payments) will be less than the actual or estimated amount of the Fund's benefits from the Upper Tier Fund's investment in the Fund (Fund Benefits). Fund Benefits are expected to primarily result from the increase in assets from investments in the Funds by the Upper Tier Funds and the large asset size of each Upper Tier Fund's shareholder account relative to other shareholder accounts. An Upper Tier Fund's shareholder account will experience fewer shareholder transactions and greater predictability of transaction activity than other shareholder accounts, thereby reducing the shareholder servicing cost to any Fund for servicing one account

registered to an Upper Tier Fund relative to the cost of servicing multiple small investors. Additionally, increased assets in Funds due to an increase in assets in the Upper Tier Funds will enable Funds to control and reduce their expense ratios by spreading operating expenses over a larger asset base.

The Funds represent that the Special Servicing Agreements will limit expense reimbursement such that no Fund will reimburse the management fees of an Upper Tier Fund. Each Fund, however, will bear the non-management, non-transfer agency, asset-based expenses of an Upper Tier Fund in proportion to the average daily value of the Fund's shares owned by the Upper Tier Fund. Additionally, each Fund will bear the recordkeeping and sub-accounting expenses of an Upper Tier Fund that are assessed as a percentage of net assets in proportion to the average daily value of the Fund's shares owned by the Upper Tier Fund.

Each Servicing Agreement will describe both the services provided to the Upper Tier Funds as well as the Fund payments. The Servicing Agreements will also provide that the Fund Payments may not exceed the amount of actual expenses incurred by the Upper Tier Funds and that no Fund will reimburse transfer agent expenses of an Upper Tier Fund at a rate in excess of the average per-account transfer agent expenses of the Fund expressed as a basis point charge.

Law and Analysis:

Section 851(a) defines a RIC, in part, as a domestic corporation registered under the 1940 Act as a management company.

Section 851(b) limits the definition of a RIC to a corporation meeting certain election, gross income, and diversification requirements.

Section 851(g) provides a special rule for a RIC having more than one fund. This provision treats each fund as a separate corporation for all purposes of the Code, other than the definitional requirement of section 851(a).

A corporation that is a RIC within the meaning of section 851 and that is taxable under subchapter M, part I, pays tax on its investment company taxable income under section 852(b)(2) and on the excess, if any, of its net capital gain over its deduction for dividends paid, determined with reference to capital gain dividends under section 852(b)(3).

Section 852 provides that a RIC is not taxable under subchapter M, part I, unless its deduction for dividends paid (as that term is defined in section 561(a) with certain modifications) for the taxable year equals or exceeds a specified portion of its taxable income (with certain adjustments) and its net tax-exempt interest income.

Section 561(a) defines the deduction for dividends paid, for purposes of section 852, to include dividends paid during the taxable year. Section 561(b) applies the rules of section 562 to determine which dividends are eligible for the deduction for dividends paid under section 561(a).

Section 562(a) states that the term “dividend,” except as otherwise provided, includes only dividends described in section 316 (which provides a definition of dividends for purposes of corporate distributions).

Section 316(a) defines the term “dividend” as any distribution of property made by a corporation to its shareholders (1) out of its earnings and profits accumulated after February 28, 1913, or (2) out of its earnings and profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

Section 562(c) provides that the amount of any distribution by a RIC to its shareholders shall not be considered a dividend for purposes of computing the dividends paid deduction under section 561, unless such distribution is *pro rata*, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

Conclusion:

Because of the unique nature of open-end RICs, payments by the Funds of a portion of the Upper Tier Funds’ operating expenses under a servicing arrangement, as described above, are not preferential dividends within the meaning of section 562(c).

Except as specifically ruled upon above, no opinion is expressed or implied regarding the Federal tax aspects of this transaction. Specifically, no opinion is expressed as to whether any of the Funds, Upper Tier Funds, or Trusts qualify as a RIC that is taxable under part I of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the Funds requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax return of a Fund for each taxable year in which the Fund pays operating expenses under the Servicing Agreement described in this letter.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Susan Thompson Baker
Susan Thompson Baker
Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions and Products)